SEC. 302. As used in this Act—

* * * * *

(c) The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establisment for the servicing of a commodity: *Provided,* That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services.

2. *The Stabilization Act of 1942* (56 Stat. 765, 50 U. S. C. App., Supp. IV, Sec. 961 et seq.), renewed by the *Stabilization Extension Acts of 1944 and 1945, supra.*

SECTION 1. In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before No-

vember 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided,* That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.

3. *District of Columbia Code, 1940 Edition.*

§ 43–103 [26: 3].

The term "public utility" as used in chapters 1–10 of this title shall mean and embrace every street railroad, street railroad corporation, common carrier, gas plant, gas corporation, electric plant, electrical corporation, water power company, telephone corporation, telephone line, telegraph corporation, telegraph line, and pipe line company. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 8, par. 1.)

* * * * *

§ 43–111 [26: 11].

The term "common carrier" when used in chapters 1–10 of this title includes express companies and every corporation, street

railroad corporation, company, association, joint-stock company or association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, operating, controlling, or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire. * * *

* * * * *

§ 43–122 [26: 22].

Chapters 1–10 of this title shall apply to the transportation of passengers, freight, or property from one point to another within the District of Columbia, and any common carrier performing such service; and chapters 1–10 of this title shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce. (Mar. 4, 1913, 37 Stat. 977, ch. 150, § 8, par. 1.)

* * * * *

§ 47–2331 [20: 1731].

(a) Every passenger vehicle for hire licensed under this section shall be considered a public vehicle.

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, except when such vehicle or vehicles are to be operated solely for sight-seeing purposes, shall, on or before the 1st day of October in each year, or before commencing such operation, submit to the Public Utilities Commission of the District of Columbia, in

triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle-miles to be operated with such vehicles within the District of Columbia during the twelve month period beginning with the 1st day of November in the same year. The Public Utilities Commission shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement, and when approved, forward one copy thereof to the commissioners of the District of Columbia or their designated agents and return one copy to the applicant. Upon receipt of the approved copy, and prior to the 1st day of November in the same year, or before commencing such operation, each such applicant shall pay to the collector of taxes, in lieu of any other franchise, personal or license tax, in connection with such operation, the sum of eight-tenths of 1 cent for each vehicle-mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the commissioners of the District of Columbia or their designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms

of paragraph (b) of this section without the approval of the Public Utilities Commission of the District of Columbia.

4. The Statements of Considerations for Amendments 45 and 50 to Revised Supplementary Regulation No. 11 are as follows (OPA Service 11:290–R et seq., 11:290–V et seq.):

AMENDMENT No. 45

Amendment No. 45 to Revised Supplementary Regulation No. 11 (which has been filed with the Division of the Federal Register) amends subparagraph (91) and adds subparagraph (140) and subparagraph (141) to paragraph (b) of Section 1499.46 of Revised Supplementary Regulation No. 11 to the General Maximum Price Regulation. It also adds a new paragraph (c) to that section, the present paragraphs (c) and (d) being redesignated (d) and (e) respectively.

The Emergency Price Control Act, in Section 302 (c) (2), exempts from regulation "the rates charged by any common carrier or other public utility." The Office of Price Administration interpreted the term "public utility" to include all businesses which were traditionally regarded as public utilities and which were generally subject to rate regulation. Typical among these were companies furnishing electric light and power, gas, water, and heat.

This construction of the Act was believed to make for uniformity in the control of the maximum prices of the businesses involved. Regardless of variations in state law, a given industry throughout the nation was either subject to, or exempt from, price

regulation under the Emergency Price Control Act of 1942.

In the light of this legal interpretation the General Maximum Price Regulation exempted from price control the services furnished by such public utilities. It likewise exempted common carrier and communication services. It is to be noted that none of these exemptions depended on whether in a particular state the rates of the carrier or other utility were in fact regulated.

On January 31, 1944, the Supreme Court of the United States held that the Davies Warehouse Company, a California corporation, doing a public warehouse business and declared by the law of California to be a public utility and whose maximum rates as such were regulated by the California Railroad Commission, was a public utility within the meaning of Section 302 (c) (2) of the Emergency Price Control Act of 1942 and consequently not subject to the General Maximum Regulation.

While the Court's opinion does not fully define the boundaries of OPA jurisdiction over common carriers and other public utilities, it is reasonably clear that, in the opinion of the Supreme Court, storage and other services when furnished by companies appropriately classified as public utilities and subject to regulation as such, and whose maximum rates or charges for such services have been established by, or otherwise regulated, a federal, state, or municipal authority having jurisdiction over such rates or charges, would not be subject to price control under the Emergency Price Control Act. Conversely, it is believed that these companies which do not meet

the above specifications would not be regarded by the Supreme Court as being "common carriers and other public utilities" within the meaning of Section 302 (c) (2). This view of the holding of the Davies case is embodied in Amendment No. 45 to Revised Supplementary Regulation No. 11 to the General Maximum Price Regulation.

It should be noted here that it is the position of OPA that, if any common carrier or other public utility is exempt from the Emergency Price Control Act, it is, nevertheless, subject to the Act of October 2, 1942.[1] Consequently, those companies which have heretofore been considered subject to the former Act and which under the Davies Co. cases are now to be considered "public utilities," must comply with the latter Act.

Where a company which has heretofore been considered a "public utility" under the Emergency Price Control Act because of the character of the service it performed is no longer to be regarded as such because it is not regulated or otherwise fails to meet the criteria indicated in the Davies Co. case, such a company is no longer subject to the Stabilization Act. However, if the service it performs falls within the definition of a "commodity" in § 302 (c)

[1] That Act (see Appendix, pp. 18–36) requires that any common carrier or other public utility, before making any general increase in its rates, must give the President or his representative thirty days' notice of such general increase and, furthermore, consent to the latter's timely intervention before the regulatory authority having jurisdiction over the rates involved. The Economic Stabilization Director is the President's representative and by directive the Price Administrator has been appointed to act for the Director.

of the Emergency Price Control Act, then the company becomes subject to regulation under that Act.

The authority thus recognized as vested in the Administrator extends to such utilities as electric light, power, gas, water, and heat companies and to common carriers of property by motor vehicles where these companies are not classified or regulated as public utilities or their maximum rates are not established or otherwise regulated, by any federal, state, or municipal body. Rather than undertake to exercise such authority by the issuance of regulations fixing new maximum prices, the Administrator has instead determined that these companies should remain subject to Procedural Regulation No. 11, issued pursuant to the Stabilization Act of October 2, 1942. This regulation requires notice of any general rate increases, accompanied by specified data relating thereto, be filed with OPA 30 days before the increase becomes effective. However, as to such unregulated carriers and utilities, the notice requirement will be predicated on Sections 2 (a) and 202 (a) of the Emergency Price Control Act. Their existing rates will become maximum prices which may be changed only by the giving of the 30-day notice as required.

Since adequate opportunity for consultation with the industries affected by this determination has been lacking, the 30-day notice requirement has been continued by an amendment to Revised Supplementary Regulation No. 11 which will remain in effect for 60 days, pursuant to the provision for temporary regulations in Section 2 (a) of the Price Control Act. During the 60 days following the effective date of the

amendment, the Administrator will take appropriate steps to consult with the industries concerned and, on the basis of such consultations and the notices heretofore or hereafter received, determine whether to continue the notice requirement in effect, to issue maximum price regulations if in any area or in any of the industries such action may appear necessary for stabilization, or to give complete exemption from regulation to some or all the industries affected.

Since the Emergency Price Control Act, by its definition of "commodity" in Section 302 (c), excludes from its application communication companies and carriers of passengers since neither type of service is rendered in connection with a commodity, the companies furnishing such services which are now exempt from the Stabilization Act because unregulated are also exempt from the Price Control Act because of the character of the services they render.

To indicate the status of utilities exempt from the General Maximum Price Regulation as regards Procedural Regulations No. 11, the amendment indicating these relationships has taken the form of a new paragraph (c) in Revised Supplementary Regulation No. 11. This lists in sub-paragraph (1), by reference to the appropriate subparagraphs in paragraph (b), those carriers and other public utility services for which notices of rate increases must be given under Procedural Regulation No. 11. Sub-paragraph (2) of the new paragraph (c) indicates those services which, though not under the Stabilization Act, are being required to remain subject to the notice requirements of Procedural Regulation No.

11, pursuant to the Price Control Act, for 60 days only. Sub-paragraph (3) lists those services which are exempt from both Acts.

Appropriate changes are being made in Procedural Regulation No. 11, concurrently with these amendments.

The accompanying amendment which accomplishes the purposes indicated above should be issued.

* * * * *

AMENDMENT No. 50

Effective March 24, 1944, the Office of Price Administration issued Amendment No. 45 to Revised Supplementary Regulation No. 11 which re-drew the jurisdictional lines of OPA in accordance with the decision of the United States Supreme Court in *Davies Warehouse Co.* v. *Bowles.* As the statement of considerations accompanying Amendment 45 indicated, it was premised on the view that, under the decision in the Davies Case, the exemption from price control accorded the rates of "common carriers and other public utilities" by Section 302 (c) (2) of the Emergency Price Control Act extended only to those persons who in furnishing services or commodities to the general public were appropriately classified as public utilities or common carriers and regulated as such, their maximum rates being established, or otherwise regulated by, federal, state or local authorities having jurisdiction.

Under this view, certain companies furnishing electricity, gas, light, heat, power, water, and various forms of transportation, which had heretofore been exempted from maximum price regulation because consid-

ered exempt under the Emergency Price Control Act, became subject to that Act because they were not under public utility or common carrier regulation and their maximum rates were not established or otherwise regulated by regulatory agencies. Pending further consideration of the problems presented by such companies, the Administrator determined to continue them under the same requirements as had previously been deemed applicable to them. These requirements were those relating to the 30-day notice of general rate increases prescribed in Procedural Regulation No. 11. Procedural Regulation No. 11 had been issued pursuant to the Stabilization Act of October 2, 1942. However, since the Stabilization Act's requirement of notice could be considered applicable only to those companies which were exempt from the Emergency Price Control Act, it became necessary to invoke the authority of the latter Act in order to impose the notice requirement on the unregulated companies which were subject to that Act but not to the Stabilization Act. This was done by Amendment 45 to Revised Supplementary Regulation No. 11.

Since Amendment 45 was issued under the authority of the Emergency Price Control Act and since the opportunity for consultation with the various unregulated segments of the numerous industries affected had not been adequate, the amendment was issued as a temporary maximum price regulation for which no prior consultation with industry is required by the Act. Being a temporary regulation, its duration was limited to 60 days. During the course of this period, the Office has endeavored to

carry out the intention declared in the statement of considerations to Amendment 45.

"* * * During the 60 days following the effective date of the amendment, the Administrator will take appropriate steps to consult with the industries concerned and, on the basis of such consultations and the notices heretofore or hereafter received, determine whether to continue the notice requirement in effect, to issue maximum price regulations if in any area or in any of the industries such action may appear necessary for stabilization, or to give complete exemption from regulation to some or all the industries affected."

Since March 24, 1944, the Office of Price Administration has undertaken numerous consultations with representative members of affected industries with respect to the institution of permanent price action. On the basis of these consultations, such notices of rate increases as have been received, and statistical and economic studies of costs, profits, margins and rate levels, the Administrator has concluded that the continuation of the notice requirements constitutes the most satisfactory of the three alternatives noted above with respect to most of the industries subject to the 60-day provision in Amendment 45. As to some of the industries, this conclusion has been reached only tentatively, but, pending further study, the notice requirements heretofore made are continued indefinitely by the accompanying amendment for all persons who, for the 60 days beginning March 24, 1944, have been subject to the requirement to give 30 days notice of general rate increases pursuant to Procedural Regulation No. 11.

To implement that decision, it has been necessary to revise certain of the subparagraphs of paragraph (b), Section 1499.46 of Revised Supplementary Regulation No. 11, which lists the services which have been subject to the temporary regulations. It has also been necessary to revise subparagraphs (1) and (2) of paragraphs (c) of Section 1499.46 which states the extent of the exemption granted to certain services listed in paragraph (b) and sets forth the requirements as to the giving of notice.

The revised subparagraphs of paragraph (b) do not state the extent of the exemption afforded the persons furnishing the services listed therein but instead refer for this purpose to paragraph (c). Under subparagraph (1) of paragraph (c), as revised, the exemption from the General Maximum Price Regulation with respect to all services heretofore subject to the temporary regulation depends on whether the companies furnishing those services offer them to the general public at rates or charges which are required by statute, regulation or judicial decision to be nondiscriminatory.

Subparagraph (1) of paragraph (c) also states the notice requirements with which all companies subject to that subparagraph must comply (except certain unregulated communication companies and carriers of passengers listed in subparagraph (3) of paragraph (c)). These notice requirements are imposed regardless of whether a company is subject to the Stabilization Act or the Emergency Price Control Act. Where, however, the company furnishing the service does not have its maximum rates established, or otherwise regulated, by a federal, state, or local authority having jurisdiction,

then the notice requirement, as subparagraph (2) makes clear, is imposed by the Emergency Price Control Act. However, in either case, the notice requirements are identical, being derived from the same provisions of Procedural Regulation No. 11. If, however, an increase in a rate or charge is made in disregard of these notice requirements then, though under either Act the increase is void, a company under the Stabilization Act would be subject to the enforcement provisions of that Act whereas the company under the Emergency Price Control Act would be subject to the enforcement measures therein provided, as would its commercial and industrial customers also. Subparagraph (2) of paragraph (c), as now revised, declares what had previously been indicated in the statement of considerations to Amendment 45, namely, that the rates and charges of unregulated companies lawfully existing on March 24, 1944, or subsequently increased pursuant to the requirements of Procedural Regulation No. 11, constitute maximum prices within the meaning of the Emergency Price Control Act and resort to higher rates and charges will subject both the company and its customers in the course of trade or business to the enforcement provisions of the Price Control Act. Since, of course, the notice procedure provides means whereby rates and charges may be increased, it is anticipated that there will be no violations arising out of refusals to abide by it.

In consulting with representatives of as many of the segments of the unregulated industries heretofore subject to the temporary regulation as it was practicable to reach, the Administrator found a willing-

ness to accept the continuation of the 30-day notice requirements to be very prevalent. The unregulated industries recognize, with him, the appropriateness of continuing as to them the same notice requirements as are applicable to the same industries in areas where common carrier or public utility rate regulation exists. Moreover, the 30-day notice requirement operates to postpone increases long enough to permit their careful consideration and to afford to the Administrator an opportunity to dissuade companies from making increases which he finds, on the basis of data submitted, not to be justifiable in the light of wartime conditions and the stabilization program. Finally, the information thus received, when added to that obtained from other sources, will enable the Administrator to determine whether any stricter controls are essential and, if so, to ascertain in what areas and segments of the affected industries the application of such controls might be required.

5. The pertinent provisions of Maximum Price Regulation No. 571, and of the Statement of Considerations therefor, read as follows:

Section 1. *General Statement.* The purpose of this regulation is to establish maximum prices for the lease or rental of "commercial motor vehicles." Generally, the rental of a "commercial motor vehicle" does not include the furnishing of a driver and except as hereinafter provided in section 2, the rental of a "commercial motor vehicle" with driver is covered as a transportation service by the General Maximum Price Regulation or any applicable regulation subsequently issued.

Sec. 2. *Services covered*—(a) *General applicability.* This regulation applies to the lease or rental, without driver, except as hereinafter provided, of the types of "commercial motor vehicles" defined in section 3 (d).

* * * * *

(c) *Exceptions.* This regulation shall not apply to:

(1) The rental or lease of any dump truck used on construction or road maintenance projects.

(2) Any transaction which is a sale of a "commercial motor vehicle," as in the case of a lease which is a substitute for a conditional sales contract, and in connection with which no maintenance or operating services are furnished. However, a lease containing an option to purchase is subject to the provisions of this regulation.

(3) Any service which has been classified by a municipal, state, or federal regulatory body as a for-hire carrier service.

(4) Leasing of trucks between carriers pursuant to directions of the Office of Defense Transportation under the provisions of the Administrative Order O. D. T. 10, issued March 10, 1944, General Order O. D. T. 3 Revised, as amended March 10, 1944, and General Order O. D. T. 17, amended March 10, 1944.

Sec. 3. *Definitions.* As used in this regulation:

* * * * *

(d) "Commercial motor vehicle" means any passenger automobile, funeral car, hearse, taxicab, bus, truck, tractor, trailer, or semi-trailer or any combination thereof propelled or drawn by mechanical power

and constructed for the purpose of transporting property or persons.

* * * * *

Sec. 16. *Relation to other regulations.* This regulation supersedes the General Maximum Price Regulation and Revised Maximum Price Regulation 165 with respect to all services covered by this regulation.

The official Statement of Considerations for MPR 571 stated in part as follows (OPA Service, Desk Book, "General," p. 80,331):

> This regulation establishes maximum prices for the rental of taxicabs, passenger cars, funeral cars, hearses, busses, trucks, tractors, trailers, semi-trailers and any combinations thereof.
>
> The regulation is a segregation and restatement of the maximum price provisions relating to charges for the rental of commercial motor vehicles, whose maximum prices heretofore were determined under MPR 165 or RMPM 165. Issuance of this separate regulation devoted exclusively to this particular subject matter is designed to facilitate administrative actions, to promote compliance, and, in general, to make price control in this field more effective than has been feasible under MPR 165—Services, which covers a wide field of unrelated services.

6. The following is an exchange of correspondence between counsel for the Price Administrator and the Executive Secretary of the Public Utilities Commission of the District of Columbia. The court below took judicial notice of this correspondence.

OFFICE OF PRICE ADMINISTRATION

WASHINGTON, 25, D. C.

MAY 24, 1945

E. J. MILLIGAN, *Executive Secretary*
Public Utilities Commission
of the District of Columbia
District Building
Washington, D. C.

DEAR MR. MILLIGAN: This is to state in writing the request which I made in our conference this afternoon for a letter from you addressed to me setting forth in detail the chronology and disposition of Formal Case No. 319, P. U. C.#4122/149, In the Matter of Rentals, Charges and Practices of Taxicab Companies and Associations. I should appreciate it particularly if your letter would indicate, with appropriate references to the official documents, whether the Commission ever actually instituted or conducted an investigation as a part of Formal Case #319 or whether the matter was dropped without any investigation or action by the Commission. It would also be most helpful to us if, in your letter, you would state whether it could be concluded from the official record of the proceedings in Formal Case #319 that the Commission's decision in 1942 not to pursue the matter to investigation or formal disposition signified any determination by the Commission, implicit or otherwise, respecting the substance or the merits of the subject matter involved in Formal Case #319.

I enclose a copy of the Price Administrator's brief in the case of *Reeves et al.* v. *Bowles,* now

pending in the United States Court of Appeals for the District of Columbia. I particularly invite your attention to the statements concerning the Public Utilities Commission, at page 34 of the enclosed brief.

Please accept my sincere thanks for your courtesy and assistance.

Very truly yours,

ABRAHAM GLASSER
Special Appellate Attorney

Enclosure

PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

WASHINGTON 4, D. C.

MAY 26, 1945

Mr. ABRAHAM GLASSER
Special Appellate Attorney
Office of Price Administration
Washington 25, D. C.

DEAR SIR: This will acknowledge receipt of your letter of May 24, 1945, along with a copy of the brief of the Price Administrator in *Reeves et al.* v. *Bowles,* for which I thank you.

In reference to formal Case No. 319, P. U. C. No. 2942/149, you are advised that the official documents of the Commission show that Order No. 2255 was promulgated under date of April 24, 1942. The Commission's docket shows that no official action has been taken as the result of the order of investigation. The only definite conclusion that may be drawn from the docket entries is that no proceedings have been conducted pursuant

to Order No. 2256. The Commission has made no determination in respect of the matters covered by the order.

Very truly yours,

E. J. MILLIGAN
Executive Secretary

U. S. GOVERNMENT PRINTING OFFICE: 1948